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Taxation - Real Estate Tax Exemption - Purely Public Charities

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TAXATION—REAL ESTATE TAX EXEMPTION—PURELY PUBLIC CHARITIES—The Supreme Court of Pennsylvania held that a private nursing home that has a significant number of Medicare/Medicaid patients qualifies as a purely public charity and is therefore exempt from payment of local real estate taxes.

St. Margaret Seneca Place v. Board of Property Assessment, Appeals & Review, 640 A.2d 380 (Pa. 1994).

St. Margaret Seneca Place ("Seneca Place") is a nursing home located in Penn Hills, Allegheny County, Pennsylvania.¹ Seneca Place is a subsidiary of the St. Margaret Health System, Inc.² St. Margaret Health System operates St. Margaret Memorial Hospital, an acute care hospital, and St. Margaret Foundation, a fundraising organization.³ St. Margaret Health System, St. Margaret Memorial Hospital, and St. Margaret Foundation are all tax exempt organizations.⁴

The patients who reside at Seneca Place are transferred from St. Margaret's Hospital when the patients no longer require acute care.⁵ All of Seneca Place's patients are self-paying or

1. *St. Margaret Seneca Place v. Board of Property Assessment, Appeals & Review*, 604 A.2d 1119, 1121 (Pa. Commw. Ct. 1992), *rev'd*, 640 A.2d 380 (Pa. 1994). Seneca Place is a 156-bed facility. *Seneca Place*, 604 A.2d at 1121.

2. *St. Margaret Seneca Place v. Board of Property Assessment, Appeals & Review*, 640 A.2d 380, 382 (Pa. 1994).

3. *Seneca Place*, 640 A.2d at 382. An acute care hospital is defined as "either a short term care hospital in which the average length of patient stay is less than thirty days, or a short term care hospital in which over 50% of all patients are admitted to units where the average length of patient stay is less than thirty days." 29 C.F.R. § 103.30(f)(2) (1993).

4. *Seneca Place*, 640 A.2d at 382. Federal tax exempt organizations include "[c]orporations, and any community chest, fund or foundation, organized and operated exclusively for religious, charitable . . . or educational purposes." 26 U.S.C. § 501(c)(3) (1988). Federal tax exempt status under section 501(c)(3) of the Internal Revenue Code does not automatically confer local tax exempt status. Seneca Place was established in the 1980s with a 1.5 million dollar grant from St. Margaret Health System, a 6 million dollar bond issue guaranteed by St. Margaret Hospital, and an \$850,000 interest-free loan from St. Margaret Hospital. *Seneca Place*, 640 A.2d at 382.

5. *Seneca Place*, 604 A.2d at 1122. Seneca Place provides three levels of care to its patients: skilled care, intermediate care, and personal care. *Id.* at 1121. Skilled care is given to patients who require significant medical attention; intermediate, or long-term care is given to patients who need assistance in performing daily

require insurance payments to cover the cost of their care.⁶

Seneca Place opened in 1989 and applied to the Allegheny County Board of Property Assessment, Appeals and Review (the "Board") for an exemption from real estate taxes.⁷ Seneca Place contended that because its property was used primarily for charitable purposes it should be granted a tax exemption.⁸ The Board ruled that Seneca Place was not a purely public charity and denied the exemption.⁹

Seneca Place appealed this decision to the Court of Common Pleas of Allegheny County and the court reversed the Board's decision.¹⁰ The court concluded that Seneca Place was a purely public charity.¹¹ The court noted that Seneca Place was founded and maintained by public or private charity.¹² Further, the court found that Seneca Place met the five necessary elements to be considered a purely public charity under the test developed by the Pennsylvania Supreme Court in *Hospital Utilization Project v. Commonwealth*.¹³

The Board appealed the decision of the common pleas court to the Pennsylvania Commonwealth Court.¹⁴ The Board argued that Seneca Place had not met its burden of proving that it was a purely public charity, founded by public or private charity, and maintained by public or private charity.¹⁵ The commonwealth court applied the five-part *HUP* test and held that Seneca Place

tasks or who are disoriented; and personal care is a combination of skilled care and intermediate care. *Id.*

6. *Id.* at 1122. Approximately 48.5% of Seneca Place's patients were covered by Medicaid, 10.7% by Medicare, 10.2% by Blue Cross, and 30.6% paid privately. *Id.*

7. *Id.*

8. *Id.* A tax exemption is "[i]mmunity from paying taxes in whole or in part." BLACK'S LAW DICTIONARY 1461 (6th ed. 1990).

9. *Seneca Place*, 604 A.2d at 1122. The Pennsylvania Constitution empowers the Pennsylvania General Assembly to exempt purely public charities from paying taxes. PA. CONST. art. VIII, § 2.

10. *In re St. Margaret Seneca Place*, 139 Pittsburgh Leg. J. 249 (1991), *rev'd*, 604 A.2d 1119 (Pa. Commw. Ct. 1992), *rev'd*, 640 A.2d 380 (Pa. 1994).

11. *Seneca Place*, 139 Pittsburgh Leg. J. at 249.

12. *Id.*

13. *Id.* at 250 (citing *Hospital Utilization Project v. Commonwealth*, 487 A.2d 1306 (Pa. 1985)). The test employed by the court is referred to as the "*HUP* test." The *HUP* test mandates classification of an organization as a purely public charity if the organization: "(a) Advances a charitable purpose; (b) Donates or renders gratuitously a substantial portion of its services; (c) Benefits a substantial and indefinite class of persons who are legitimate subjects of charity; (d) Relieves the government of some of its burden; and (e) Operates entirely free from private profit motive." *Hospital Utilization Project*, 487 A.2d at 1317. See notes 85-94 and accompanying text for further discussion of *Hospital Utilization Project*.

14. *Seneca Place*, 604 A.2d at 1119. The Municipality of Penn Hills and the Penn Hills School District joined in the Board's appeal. *Id.* at 1121.

15. *Id.* at 1123.

met none of the criteria, and therefore, concluded that the nursing home was not a purely public charity.¹⁶

The court reasoned that Seneca Place did not advance a charitable purpose because it intended to make a profit by charging a fee to its patients for care.¹⁷ Because Seneca Place did not attempt to serve those patients who could not afford its fee, the court determined that Seneca Place did not donate or gratuitously render a substantial portion of its services.¹⁸ Furthermore, the court opined that Seneca Place did not benefit a substantial and indefinite class of persons who were legitimate subjects of charity because the nursing home did not admit patients who could not afford its services.¹⁹ In addition, the court found that Seneca Place did not relieve a governmental burden because Medicare and Medicaid payments were a substantial portion of the home's revenue.²⁰ The court decided that Seneca Place intended to make a profit in 1991 and, therefore, did not operate entirely free from private profit motive.²¹ The court concluded that Seneca Place was not founded or maintained by public or private charity, and reversed the decision of the common pleas court.²²

Seneca Place petitioned for allowance of appeal to the Supreme Court of Pennsylvania, which granted allocatur.²³ The sole issue considered by the supreme court was whether Seneca Place qualified as a purely public charity.²⁴

16. *Id.* at 1123-26.

17. *Id.* at 1124.

18. *Id.* at 1125. The court likened Seneca Place to a commercial airline in that Seneca Place intended to fill all of its beds with patients, whether paying or non-paying, much in the same way that commercial airlines seek to fill their planes, even with passengers who pay less than full price. *Id.* The court reasoned that it was a matter of business practice, and not charity, that prompted Seneca Place and airlines to lose money. *Id.*

19. *Seneca Place*, 604 A.2d at 1125.

20. *Id.* Medicare and Medicaid payments comprised 59.2% of Seneca Place's revenues. *Id.*

21. *Id.* at 1126. Although Seneca Place operated at a loss in 1989 and 1990, its operating budget predicted a profit in 1991. *Id.*

22. *Id.* at 1126-27. The court reasoned that the loans and bonds that established Seneca Place had to be repaid and therefore were not charity. *Id.* at 1126. In addition, the court held that Seneca Place was maintained by the fees it charged for its services, and not by charity. *Id.*

23. *Seneca Place*, 640 A.2d at 382. Allocatur is a term used to denote that a writ or order is allowed. BLACK'S LAW DICTIONARY 75 (6th ed. 1990).

24. *Seneca Place*, 640 A.2d at 382. The court determined that if Seneca Place was a purely public charity the home would be exempted from paying real estate taxes. *Id.* The court stressed the importance of reviewing this issue because the commonwealth court's decision denying Seneca Place's request for tax exempt status was a "serious departure" from prior supreme court rulings. *Id.* Also, the court determined that the holding of the instant case would have broad ramifications on

The supreme court applied the *HUP* test to determine if Seneca Place qualified as a purely public charity.²⁵ In assessing the first prong of the test, the court reasoned that Seneca Place advanced a charitable purpose because any profits realized by Seneca Place would be used to service the nursing home's debt.²⁶ Also, the court determined that Seneca Place's acceptance of a large portion of patients that relied on Medicaid to pay for their care was consistent with the requirement that a public charity advance a charitable purpose.²⁷

The court further determined that Seneca Place met the second requirement of the test because it donated or rendered gratuitously a substantial portion of its services.²⁸ The court determined that because Seneca Place accepted Medicaid patients and subsidized the difference between Medicaid payments and the cost of providing services to the patients that received assistance, a substantial portion of services were rendered gratuitously.²⁹

Applying the third part of the *HUP* test, the court concluded that the patients qualified as legitimate subjects of charity.³⁰ The court noted that Seneca Place did not discriminate against Medicaid patients and that these patients' charges were only partially covered by the government.³¹ The court further determined that Seneca Place relieved the government of some of its burden and therefore satisfied the fourth prong of the test.³² This determination was based on the fact that the home covered the difference between government payments for Medicaid recipient residents and the cost of providing services to these residents.³³

similar charitable health care facilities. *Id.*

25. *Id.* See note 13 for the elements of the *HUP* test. Justice Flaherty authored the opinion of the court, which was decided by a five to one vote. Justice Cappy dissented on the basis of the commonwealth court opinion and Justice Zappala did not participate in the decision. *Id.* at 386.

26. *Id.* at 383. The court applied the first prong of the *HUP* test which states that an organization is a purely public charity if it "advances a charitable purpose." *Id.* at 382.

27. *Id.*

28. *Id.* at 383-84.

29. *Seneca Place*, 640 A.2d at 383-84. Government payments accounted for approximately two-thirds of the total cost of Seneca Place's Medicaid recipients. *Id.* at 382. Seneca Place covered the remaining one-third. *Id.* The court also noted that an institution did not have to provide wholly gratuitous services to any of its patients in order to qualify as a purely public charity. *Id.* at 384.

30. *Id.*

31. *Id.*

32. *Id.* at 385.

33. *Id.*

Finally, the court opined that Seneca Place fulfilled the last requirement of the test because the nursing home operated without a profit motive.³⁴ Although the commonwealth court had found that Seneca Place projected a surplus for 1991, the supreme court reasoned that the surplus did not evidence a profit motive, because any surplus revenue would have been used to service Seneca Place's debt.³⁵ Because Seneca Place satisfied the five criteria necessary to qualify as a purely public charity, the supreme court reversed the order of the commonwealth court and reinstated the order of the trial court granting Seneca Place real estate tax exempt status.³⁶

The recognition of charitable uses can be traced back to English law as the Charitable Uses Act.³⁷ The Charitable Uses Act acknowledged institutions that cared for elderly indigents, injured soldiers and sailors, and institutions of learning as valid charitable uses.³⁸ The Charitable Uses Act was never adopted by the Pennsylvania Legislature but Pennsylvania courts adopted its maxims as common law.³⁹

The first express constitutional limitation on taxing power in Pennsylvania was written into the 1874 Constitution.⁴⁰ The Pennsylvania General Assembly passed the Act of May 14th, 1874, pursuant to the authority granted by Article IX, section 1 of the Pennsylvania Constitution.⁴¹ The Act of 1874 exempted specific organizations and institutions from paying local taxes if

34. *Seneca Place*, 640 A.2d at 385 (citing *West Allegheny Hospital v. Board of Property Assessment, Appeals & Review*, 455 A.2d 1170 (Pa. 1982) (holding that surplus revenue used for facility maintenance and operation was not private profit)).

35. *Seneca Place*, 640 A.2d at 385.

36. *Id.* at 386. The supreme court opined that it was not necessary for an institution to be maintained by a charity in order to qualify as a purely public charity. *Id.* at 385.

37. The Statute of Elizabeth (Charitable Uses Act), 1601, 43 Eliz., ch. 4 (Eng.).

38. 43 Eliz., ch. 4. The statute specifically recognized "[r]elief of aged impotent and poore people . . . maintenance of sicke and maymed Souldiers and Marriners, Schooles of Learninge, Free Schooles and Schollers in Universities" as charitable uses. *Id.*

39. See *In re Hill School*, 87 A.2d 259, 261 (Pa. 1952) (holding that the Hill School was exempt from paying real estate taxes as a purely public charity). See notes 68-73 and accompanying text for a discussion of *Hill School*.

40. Cyril A. Fox, Jr., *The Uneasy Law of Real Estate Tax Exemption in Pennsylvania*, 39 U. PITT. L. REV. 175, 178 (1977). Article IX provided that "the General Assembly may, by general laws, exempt from taxation . . . institutions of purely public charity." PA. CONST. of 1874 art. IX, § 1. The Pennsylvania General Assembly may only grant tax exempt status to those organizations that are purely public charities. See PA. CONST. art. VIII, § 2. The Pennsylvania Constitution was amended in 1968, and Article IX, section 1 of the 1874 Constitution was rewritten into Article VIII, section 2. See PA. CONST. art. VIII, § 2.

41. Act of May 14th, 1874, 1874 Pa. Laws 158.

they were "found, endowed, and maintained by public or private charity."⁴²

The Pennsylvania Supreme Court adopted a definition of each element of "purely public charity" in *Donohugh's Appeal*.⁴³ In *Donohugh*, the court considered whether the appellee's library was a purely public charity and should be exempt from paying taxes to the City of Philadelphia.⁴⁴ In determining that the library was a public charity, the court held that a public charity did not have to accept all who applied and could practice exclusionary membership policies.⁴⁵ The court determined that the word "purely" in purely public charity should be literally interpreted, and purely public charities had to completely fulfill a "public purpose."⁴⁶ Because the library fulfilled a public purpose, the court concluded that the appellee's library was a purely public charity and enjoined the City of Philadelphia from collecting taxes on the library.⁴⁷

The first landmark Pennsylvania Supreme Court case to decide the issue of whether an organization was entitled to tax exempt status as a purely public charity was *Trustees of Academy of Protestant Episcopal Church v. Taylor*.⁴⁸ In *Episcopal Academy*, a school sought exemption from paying real estate taxes to the City of Philadelphia.⁴⁹ After defining public charity,⁵⁰ the supreme court held that in order to qualify as a purely public charity, an organization had to be self-sufficient and could not make a profit.⁵¹ The court held that once this requirement was met, the organization must then be tested according to the statutory provisions of the Act of 1874.⁵² In this case, the court

42. *Id.* The Act of 1874 specifically exempted "churches, meeting-houses, or . . . places of stated worship . . . burial-grounds not used or held for private or corporate profit[,] . . . hospitals, universities, colleges, seminaries, academies, associations, and institutions of learning." *Id.*

43. 86 Pa. 306 (Pa. 1878). The supreme court fully adopted the trial court's definition of "purely public charity." *Donohugh's Appeal*, 86 Pa. at 317-18.

44. *Donohugh's Appeal*, 86 Pa. at 317-18.

45. *Id.* at 313. The trial court opined that an all-male college or a hospital that accepted patients with only "recent injuries" could still be public charities. *Id.*

46. *Id.* The court opined that an organization need not be operated by the state but may be a private organization and still qualify as a purely public charity. *Id.* at 318.

47. *Id.* at 318.

48. 25 A. 55 (Pa. 1892) [hereinafter *Episcopal Academy*].

49. *Episcopal Academy*, 25 A. at 57.

50. *Id.* at 56. The court defined a public charity as "whatever is gratuitously done or given in relief of the public burdens or the advancement of the public good." *Id.* The court opined that the classification of schools as institutions of charity predated the Statute of Charitable Uses. *Id.*

51. *Id.* at 57. The court reasoned that an organization must not seek a business profit and "must not go beyond self-support." *Id.*

52. *Id.* at 56. Precisely, the court held that the appellee must be "founded, en-

concluded that because the school was maintained by income from its property and the tuition it charged its pupils, it was exempt from paying real estate taxes.⁵³

In 1933, the Pennsylvania General Assembly passed the General County Assessment Law, which enabled counties to tax real estate.⁵⁴ Pursuant to its authority under the Pennsylvania Constitution, the legislature specifically exempted certain organizations and associations, much as it had done in the Act of 1874.⁵⁵

The holding of *Episcopal Academy* was expanded nearly a half-century later in *YMCA of Germantown v. City of Philadelphia*.⁵⁶ In *YMCA of Germantown*, the appellant sought real estate tax exempt status for a dormitory that was part of its larger YMCA facility.⁵⁷ The issue before the supreme court was whether the dormitory section of the appellant's facility was, from a charitable standpoint, an integral part of the larger, tax exempt facility.⁵⁸ The court noted that in addition to the requirement that an organization be self-sufficient, the organization had to also relieve the government of part of its burden in order to qualify as a purely public charity.⁵⁹ The court also asserted that an organization had to provide its services at a nominal or negligible charge to legitimate subjects of charity in order to qualify as a purely public charity.⁶⁰ The court compared the appellant's dormitory to commercial lodging facilities and reasoned that neither were purely public charities.⁶¹ Because the appellant's dormitory did not meet the court's criteria, the court

dowed and maintained by public or private charity." *Id.*

53. *Id.* at 57. The bulk of the appellee's maintenance was obtained from the tuition payments of students that paid full tuition. *Id.* at 56.

54. General County Assessment Law, Act of May 22, 1933, P.L. 833 (codified as amended, PA. STAT. ANN. tit. 72, §§ 5020-1 to 5020-602 (1968 & Supp. 1994)). The statute exempts "[a]ll hospitals, universities, colleges, seminaries, [and] academies . . . founded, endowed, and maintained by public or private charity" from paying all property taxes. PA. STAT. ANN. tit. 72, § 5020-204(a).

55. PA. STAT. ANN. tit. 72, § 5020-204.

56. 187 A. 204 (Pa. 1936), *overruled in part by* West Allegheny Hospital v. Board of Property Assessment, Appeals & Review, 455 A.2d 1170, 1173 (Pa. 1982).

57. *YMCA of Germantown*, 187 A. at 205.

58. *Id.* at 207-08. Although the court was not called on to consider whether the YMCA facilities, excluding the dormitory, served a purely public charitable purpose, the court opined that the facilities were a place of "charity or benevolence." *Id.* at 214.

59. *Id.* at 208, 210.

60. *Id.* at 209. This requirement was overruled by the Supreme Court in *West Allegheny Hospital* where the court stated that, "[s]uch a requirement clearly conflicts with the evident intent . . . to accommodate evolving institutional needs." *West Allegheny Hospital*, 455 A.2d at 1173.

61. *YMCA of Germantown*, 187 A. at 209.

concluded that it was not a purely public charity and, therefore, was not exempted from paying property taxes.⁶²

The supreme court's requirement in *YMCA of Germantown* that an organization had to relieve the government of its burden was held to be controlling in *In re Ogontz School*.⁶³ In *Ogontz School*, the appellant, a private school with an enrollment of 300, applied for an exemption from real estate taxes.⁶⁴ The court ruled that because the majority of the students that attended the school paid full tuition, the students were not objects of charity and therefore the institution did not relieve the government of any of its burden.⁶⁵ Additionally, the court opined that because only a small number of students received scholarships and the scholarships were funded from the tuition payments of the students that paid full tuition, the students on scholarship were also not recipients of charity.⁶⁶ Therefore, the court held that because the appellant did not qualify as a purely public charity, the private school was not exempt from paying taxes.⁶⁷

In *In re Hill School*,⁶⁸ the Pennsylvania Supreme Court established a new criterion for an organization to qualify as a purely public charity. In *Hill School*, the supreme court considered whether the non-profit educational corporation was exempt from paying real estate taxes as a purely public charity under the Pennsylvania Constitution and the General County Assessment Law.⁶⁹ The court held that in order for an organization to qualify as a purely public charity, the organization had to operate entirely free from private profit motive.⁷⁰ The court deter-

62. *Id.* at 214. Only about 12 of the 94 dormitory residents were unemployed and relied on gratuitous lodging. *Id.* at 207. The appellant charged an average fee of \$5.00 per week to its residents, one-half of whom earned more than \$100.00 per month in wages. *Id.* at 209-10.

63. 65 A.2d 150, 153 (Pa. 1949). The appellant applied for an exemption from real estate taxes on the theory that the private school was a tax exempt charitable organization. *Ogontz School*, 65 A.2d at 151.

64. *Ogontz School*, 65 A.2d at 152.

65. *Id.* at 153-54. Approximately 90% of the students paid full tuition. *Id.* at 153.

66. *Id.* The appellant provided two to four full scholarships per year and 50 to 75 partial scholarships per year. *Id.*

67. *Id.* at 164.

68. 87 A.2d 259 (Pa. 1952).

69. *Hill School*, 87 A.2d at 261.

70. *Id.* at 262. *Hill School*, a non-profit educational corporation, sought exemption from paying property taxes. *Id.* at 262-63. The court noted that the word "purely" in purely public charity mandated that an organization operate entirely free from a private profit motive. *Id.* at 263 (citing *Burd Orphan Asylum v. School District of Upper Darby*, 90 Pa. 21 (1879)).

mined that an organization could qualify as a purely public charity even if it received payment for services rendered.⁷¹ The court also asserted that an organization could not have business or commercial interests and be classified as a purely public charity.⁷² Because this non-profit corporation conformed to these requirements, the court granted it tax exempt status.⁷³

Ten years later, in *In re Woods Schools*,⁷⁴ the supreme court was faced with the issue of whether a school for handicapped students qualified as a purely public charity.⁷⁵ In *Woods Schools*, the court asserted that an organization seeking to be classified as a purely public charity had to donate or render gratuitously a substantial portion of its services.⁷⁶ The court reasoned that it was permissible for an organization to charge a fee for its services but the organization had to nonetheless use the revenue from such fees to make the organization accessible to those who could not pay for services.⁷⁷ Because the appellant accepted only those who were able to pay for its services, the court held that this school for handicapped students was not a purely public charity and was therefore not exempt from paying property taxes.⁷⁸

Shortly after its decision in *Woods Schools*, the supreme court reaffirmed the requirement that a purely public charity had to operate entirely free from a private profit motive in *In re Tax Appeals of United Presbyterian Homes*.⁷⁹ In *United Presbyterian Homes*, the appellee sought real estate tax exempt status for its home for elderly residents.⁸⁰ The sole issue considered by the

71. *Hill School*, 87 A.2d at 262. The court noted that a hospital that received payment for services would qualify as a purely public charity as long as its facilities were "available to all." *Id.*

72. *Id.*

73. *Id.* at 264. In determining that the school met the criterion, the court relied on the lower court's findings that the school operated at a surplus in only three years of its 29-year existence and that fees charged to students accounted for only 82% of the school's operating costs. *Id.*

74. 178 A.2d 600 (Pa. 1962).

75. *Woods Schools*, 178 A.2d at 601. The appellant operated a facility for the education, treatment and care of physically, mentally, socially or emotionally handicapped adults and children. *Id.*

76. *Id.* at 604.

77. *Id.* The court distinguished the instant case from *Episcopal Academy* because the school in *Episcopal Academy* used its excess revenue derived from tuition charges to fund scholarships for students who were unable to pay. *Id.* In contrast, the appellant used its excess profits for facility improvements and expansion. *Id.* at 603.

78. *Id.* at 603-04.

79. 236 A.2d 776, 780 (Pa. 1968).

80. *United Presbyterian Homes*, 236 A.2d at 777. The appellee's home accepted individuals aged 65 and over. *Id.*

court was whether the appellee's home was a purely public charity.⁸¹ In determining that the home was a public charity, the court asserted that the appellee's real estate was used for a charitable purpose and the appellee's home was not in competition with other similar commercial homes.⁸² The court also focused on the fact that the home had never realized a profit.⁸³ These three factors indicated to the court that the home for the elderly was a purely public charity and should be exempt from property taxes.⁸⁴

The supreme court relied on over one hundred years of common law that interpreted the meaning of the purely public charity constitutional exemption provision to formulate a five-part test in *Hospital Utilization Project v. Commonwealth*.⁸⁵ In *Hospital Utilization Project*, the appellant, a collector of statistical data, sought an exemption from paying sales and use taxes.⁸⁶ The issue before the court was whether the appellant qualified as a purely public charity so that it was constitutionally and statutorily exempt from paying sales and use taxes.⁸⁷ Because a precise definition of purely public charity had not been formulated prior to *Hospital Utilization Project*, the court adopted a five-part test based on prior case law.⁸⁸

The HUP test mandates classification of an organization as a purely public charity if it: "(a) Advances a charitable purpose; (b) Donates or renders gratuitously a substantial portion of its services; (c) Benefits a substantial and indefinite class of persons who are legitimate subjects of charity; (d) Relieves the government of some of its burden; and (e) Operates entirely free from

81. *Id.* at 778.

82. *Id.* at 779. The court's assertion was in response to the appellant's argument that the appellee's home was in direct competition with other commercial homes and therefore could not be granted real estate tax exempt status. *Id.* at 778.

83. *Id.* at 780. The court noted that courts historically have ruled that homes for the elderly that operate at or below cost were charitable organizations. *Id.* (quoting *Fifield Manor v. County of Los Angeles*, 10 Cal. Rptr. 242 (Cal. Dist. Ct. App. 1961)). The court emphasized that if the appellee's home had made a profit, the profit would not have benefitted an individual or a private, for-profit corporation. *United Presbyterian Homes*, 236 A.2d at 780.

84. *United Presbyterian Homes*, 236 A.2d at 780. The court also reasoned that because of the ever-increasing lifespan of Americans, facilities such as the appellee's home should be supported by a liberal interpretation of the definition of "purely public charity." *Id.* at 779.

85. 487 A.2d 1306 (Pa. 1985).

86. *Hospital Utilization Project*, 487 A.2d at 1309. The appellant collected and collated medical statistical data for a consortium of hospitals. *Id.* Charitable organizations are exempt from paying sales and use taxes under the Tax Reform Code of 1971. See PA. STAT. ANN. tit. 72, § 7204(10) (1991).

87. *Hospital Utilization Project*, 487 A.2d at 1310.

88. *Id.* at 1312.

private profit motive.⁸⁹

The court applied the five-part test to the appellant and revealed that its eleemosynary⁹⁰ characteristics were no greater than those of similar for-profit entities.⁹¹ The court emphasized the criterion that the appellant operate free from private profit motive.⁹² The court found that the appellant had accumulated a profit and reinvested it to upgrade its computer resources.⁹³ Therefore, the court concluded, the appellant was not exempt from paying sales and use taxes as a purely public charity.⁹⁴

The *HUP* test synthesized the supreme court's divergent rationales that were applied to determine if organizations qualified as purely public charities. The court required that an organization relieve part of a governmental burden and provide its services to legitimate objects of charity as per its holding in *YMCA of Germantown*.⁹⁵ The court also used the holding of *Hill School* that mandated that an organization operate entirely free from a private profit motive.⁹⁶ Additionally, the court adopted the language of *Woods Schools* and required organizations to donate or render gratuitously a substantial portion of their services in order to be classified as purely public charities.⁹⁷

The supreme court's decision in *Seneca Place* affirmed the court's adherence to the *HUP* test as the sole method of determining whether an institution qualified as a purely public charity. The test was a logical development because a court, in order to decide if an organization qualified as a purely public charity, had to perform a complete analysis of nearly a century of case law that interpreted the phrase "purely public charity." The *HUP* test provided an effective legal definition of purely public charity, and lower courts may apply the *HUP* test on a case-by-case basis. The court correctly applied the *HUP* test in *Seneca Place* because the test is universal in scope and can be applied

89. *Id.* at 1317.

90. Eleemosynary is defined as "of, relating to, or supported by charity." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 402 (9th ed. 1983).

91. *Hospital Utilization Project*, 487 A.2d at 1314.

92. *Id.* at 1317-18.

93. *Id.* at 1318. The court noted that the appellant operated at a net profit for three consecutive years. *Id.* at 1310. The appellant used the profits to purchase computer terminals, develop computer software and mitigate future revenue shortfalls. *Id.*

94. *Id.* at 1318. The court further held that the appellant was not exempt from paying sales and use taxes. *Id.*

95. *YMCA of Germantown*, 187 A. at 210. See notes 56-62 and accompanying text.

96. *Hill School*, 87 A.2d at 262. See notes 68-73 and accompanying text.

97. *Woods Schools*, 178 A.2d at 604. See notes 74-78 and accompanying text for a discussion of *Woods Schools*.

to a diverse array of organizations. Application of the test can be performed by trial and appellate courts with equal relevance to educational institutions, medical care facilities, and nursing homes.

In *Seneca Place*, the supreme court did not mask its disapproval of the commonwealth court's denial of Seneca Place's tax exempt status.⁹⁸ However, the supreme court did not cite to precedent to which the commonwealth court's ruling in *Seneca Place* was anomalous. In fact, the supreme court, in *United Presbyterian Homes*, discounted the precedential value of cases that determined whether an organization qualified as a purely public charity.⁹⁹ Also, the supreme court did not disapprove of commonwealth court holdings prior to *Seneca Place* that denied tax exempt status for retirement homes for the elderly.¹⁰⁰ The supreme court's decision in *Seneca Place* was primarily concerned with the implications of the commonwealth court's denial of tax exempt status to Seneca Place. As the supreme court emphasized in *United Presbyterian Homes*, nursing homes serve an important social function and should be fiscally supported by liberal interpretations of real estate tax exemption laws.¹⁰¹ Denial of tax exempt status to Seneca Place would have sharply contrasted with this policy.

The holding of *Seneca Place*, at least superficially, allows real estate tax exempt status for nursing home facilities. However, the holding will likely be constrained to the facts of the case because of the court's reliance on public policy. The court relied heavily on Seneca Place's acceptance of a large number of Medicaid and Medicare patients¹⁰² and the fact that the home did not operate at a surplus, and if it did, the surplus funds would be used for debt service.¹⁰³ Therefore, the precedential value of *Seneca Place* will most likely be limited to its explicit reiteration

98. *Seneca Place*, 640 A.2d at 382. See note 24 for the court's precise language.

99. *United Presbyterian Homes*, 236 A.2d at 778. The court reaffirmed this position in *G.D.L. Plaza Corp. v. Council Rock School District*. See *G.D.L. Plaza Corp. v. Council Rock School District*, 526 A.2d 1173, 1175 (Pa. 1987) (holding that an apartment complex for elderly residents was not exempt from taxes as a purely public charity).

100. See, e.g., *Lutheran Home at Topton v. Board of Assessment Appeals*, 515 A.2d 59 (Pa. Commw. Ct. 1986), *allocatur denied*, 527 A.2d 548 (Pa. 1987), *allocatur denied*, 529 A.2d 1084 (Pa. 1987) (holding that a retirement facility for the elderly did not advance a charitable purpose and therefore was not entitled to tax exempt status).

101. *United Presbyterian Homes*, 236 A.2d at 779.

102. See *Seneca Place*, 640 A.2d at 382. See note 29 and accompanying text.

103. *Id.* See note 35 and accompanying text.

and application of the *HUP* test and the supreme court's underlying policy reason of favoring tax exempt status for nursing homes.

In the future, cashed-starved counties and municipalities in Pennsylvania will increasingly look to traditionally tax exempt organizations to help alleviate budget shortfalls.¹⁰⁴ Although the *HUP* test provides a reliable means to determine whether hospitals, nursing homes, educational institutions and the like qualify for tax exempt status, it is a fact-dependent test that will certainly lead to lengthy litigation and numerous appeals. However, this inherent shortfall is overcome by the obvious finality that results from a ruling by the supreme court that is based on application of the facts of the case to the *HUP* test. Any alternative non-legislative means of determining if an organization is a purely public charity would likely suffer similar shortfalls and provide a much more obscure method of determination and analysis.

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104. See, e.g., *Trustees of the University of Pennsylvania v. Board of Revision of Taxes*, 649 A.2d 154, 161 (Pa. Commw. Ct. 1994) (applying the *HUP* test to determine if certain properties owned by the University of Pennsylvania should be exempt from real estate taxes); *Couriers-Susquehanna, Inc. v. County of Dauphin*, 645 A.2d 290, 292-94 (Pa. Commw. Ct. 1994) (applying the *HUP* test to determine if an elder care home qualified as a purely public charity); *Appeal of the City of Washington v. Board of Assessment Appeals of Washington County*, 74 Wash. Cty. Rep. 114, 119-25 (1994) (applying the *HUP* test to determine if Washington and Jefferson College qualified for real estate tax exempt status as a purely public charity).

